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HUB LAW OFFICES

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 VICKI J. AZNARAN and  
19 RICHARD N. AZNARAN,  
20 Plaintiffs,  
21 vs.  
22 CHURCH OF SCIENTOLOGY OF  
CALIFORNIA, et al.,  
23 Defendants.

) CASE No. CV 88-1796 JMI (Ex)  
)  
) DEFENDANTS' REPLY IN SUPPORT OF  
) MOTION TO TRANSFER THIS ACTION  
) TO THE UNITED STATES DISTRICT  
) COURT FOR THE NORTHERN DISTRICT  
) OF TEXAS

24 \_\_\_\_\_  
AND RELATED COUNTERCLAIM.

) DATE: August 17, 1992  
) TIME: 10:00 a.m.  
) CRTRM: Hon. James M. Ideman

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1 INTRODUCTION

2 In their moving papers, defendants pointed out that the  
3 bases of plaintiffs' claims for fraud, emotional distress, loss  
4 of consortium and conspiracy lie in events which allegedly  
5 occurred in Texas between 13 and 17 years ago. In their defense,  
6 defendants must rely on the testimony of at least 20 witnesses,  
7 all described in the moving papers and by declaration, none of  
8 whom are employees or agents of defendants, many of whom are  
9 hostile, and all of whom are beyond the subpoena power of this  
10 Court. Under these circumstances, defendants' motion to transfer  
11 this case to the Northern District of Texas is both timely and  
12 necessary to ensure a fair trial.

13 As demonstrated below, none of the objections raised by  
14 plaintiffs to defendants' efforts to have plaintiffs' alleged  
15 injuries tried in plaintiffs' home state have merit. Convenience  
16 of the witnesses, convenience of the parties and the interests of  
17 justice dictate that the case be transferred to the Northern  
18 District of Texas.

19 I.

20 THE MOTION TO TRANSFER IS TIMELY

21 Plaintiffs' argument that this motion is untimely fails for  
22 two reasons: the facts are that the defendants acted diligently,  
23 and did not delay in filing this motion, and the law provides  
24 that such a motion may be properly made at virtually any stage of  
25 the proceedings.

26 Factually, defendants believed that this case would narrow,  
27 considerably before trial. This motion did not become timely  
28 until after discovery and after denial of the summary judgment

1 motions that would have removed the incidents that were remote  
2 from California (both in time and distance) from the case  
3 entirely. Since that event occurred on June 25, 1992, this  
4 motion was brought expeditiously.

5 Moreover, § 1404(a) sets no limit on the time at which a  
6 motion to transfer may be made. Indeed, such motions may be made  
7 in a timely fashion years after litigation is commenced, e.g.,  
8 American Standard, Inc. v. Bendix Corp., 487 F.Supp. 254, 261  
9 (W.D.Mo. 1980), or even after a trial, if retrial is needed,  
10 e.g., Dill v. Scuka, 198 F.Supp. 808 (E.D.Pa. 1961). Like  
11 anything else, the factor of delay (or, as in this case, alleged  
12 delay) is but one factor among many to be weighed by the court in  
13 deciding whether or not to transfer a case.

14 The cases cited by plaintiffs are clearly distinguishable.  
15 In Securities and Exchange Commission v. Savoy Industries, Inc.,  
16 587 F.2d 1149 (D.C.Cir. 1978), for example, the defendant sought  
17 to transfer the case only one week before trial. The trial judge  
18 reasonably assumed that a transfer would delay trial. Here, no  
19 trial date has been set, and plaintiffs have refused to  
20 participate in pre-trial conference proceedings. Transfer out of  
21 this busiest of courthouses at this stage could facilitate,  
22 rather than delay, trial herein. In Trader v. Pope & Talbot,  
23 Inc., 190 F.Supp. 282 (E.D.Pa. 1961), the plaintiff, not  
24 defendant, sought to change venue, and the court denied the  
25 motion on the ground that, "we believe that the statute is not  
26 available to a plaintiff who voluntarily chooses his own forum."  
27 Here, defendants seek to place plaintiffs in plaintiffs' home  
28 court. Trader is plainly inapplicable. In Kasey v. Molybdenum

1 Corporation of America, 408 F.2d 16 (9th Cir. 1969), the  
2 plaintiffs sought to transfer a case that had been pending for  
3 nine years because they had moved to a different state, citing no  
4 inconvenience other than their own. In Moore v. Telfon  
5 Communications Corp., 589 F.2d 959 (9th Cir. 1978), the motion to  
6 change venue was similarly brought by the plaintiff, after he  
7 fired his initial set of lawyers. Here, defendants seek a new  
8 forum because, without one, vital witnesses will be kept from  
9 providing testimony.

10 II.

11 CONVENIENCE OF COUNSEL IS NOT SIGNIFICANT TO A §1404

12 TRANSFER MOTION

13 Plaintiffs argue that it will be less convenient for their  
14 Northern California counsel to commute to Dallas for trial (3  
15 hours by airplane) than to commute to Los Angeles for trial (1  
16 hour by airplane). In reality, plaintiffs have had counsel in  
17 Dallas since 1987, before this case was ever filed. Moreover,  
18 the vast majority of cases decided under §1404(a) have held that  
19 the convenience of counsel is not to be considered at all in  
20 determining whether or not a case is to be transferred.

21 Hernandez v. Graebel Van Lines (E.D.N.Y. 1991) 761 F.Supp. 983,  
22 988; Wright, Miller & Cooper, Federal Practice and Procedure,  
23 Vol. 15, §3850, pp. 411-413, and cases cited in note 5.

24 Plaintiffs' complaint that this would increase the cost to  
25 them is indeed puzzling. Plaintiffs themselves would have to  
26 leave their business and commute to Los Angeles for the months of  
27 the trial of this action here, whereas, were the trial in Dallas,  
28 they could remain in their own home, where they can easily

1 maintain their business, and have none of the costs attendant to  
2 an extended stay away from home. The cost of flying their  
3 lawyers to Dallas instead of Los Angeles could hardly be greater  
4 than their own projected commuter costs.

5 III.

6 TEXAS LAW, NOT CALIFORNIA LAW, IS APPLICABLE TO  
7 MANY OF PLAINTIFFS' CLAIMS

8 Defendants agree that it is best to have a court familiar  
9 with applicable state law try the case where possible. Here,  
10 however, plaintiffs have presented claims that must be evaluated  
11 under Texas law (loss of consortium, fraud, conspiracy, for  
12 example) and under California (false imprisonment). If anything,  
13 this case is postured to present more Texas law, and is more  
14 amenable to trial in Texas than California.<sup>1</sup>

15 IV.

16 PLAINTIFFS' CHOICE OF FORUM IS ENTITLED TO LITTLE  
17 WEIGHT WHERE, AS HERE, THEY HAVE CHOSEN TO SUE  
18 OUTSIDE OF THEIR HOME FORUM

19 Plaintiffs' next argument is that their initial choice of  
20 forum in this matter is entitled to "great weight." However,  
21 none of the cases cited by plaintiffs for this general

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22 <sup>1</sup> Nor is this Court more the correct forum because it has other  
23 cases pending before it in which some of the defendants are  
24 parties. As this Court is well aware (although plaintiffs  
25 obviously are not), the Scott and Wollersheim consolidated cases  
26 (CV 85-711 JMI and CV 85-7197 JMI) involve trademark and  
27 copyright claims in which both sides assert that Scientology  
28 religious practices are both religious and protected. The other  
case cited by plaintiffs, Church of Scientology of California v. United States (CV-90-2042 JMI), does not involve any of the defendants herein at all, since plaintiffs never served the Church of Scientology of California. In any event, it is a tax case.

1 proposition agree that that is the case in the situation present  
2 here: where plaintiffs have deliberately avoided their home  
3 forum, and sued in another state. In such cases, the courts have  
4 uniformly held that plaintiffs' choice is entitled to  
5 considerably less weight. Piper Aircraft Company v. Reyno, 454  
6 U.S. 235, 256 (1981); Jordan v. Delaware & Hudson Railway  
7 Company, 590 F.Supp. 997, 998 (E.D.Pa. 1984). In this case, the  
8 convenience of the witnesses is the primary factor to be weighed  
9 by the court, not plaintiffs' initial choice of forum. As  
10 demonstrated below, Texas is the only forum which can accommodate  
11 the witnesses knowledgeable concerning the facts alleged by  
12 plaintiffs in their complaint.

13 v.

14 TEXAS IS THE STATE MOST SUITED TO  
15 ACCOMMODATING THE NEEDS OF BOTH PLAINTIFFS'  
16 AND DEFENDANTS' WITNESSES

17 The most important factor in a § 1404(a) motion is the  
18 convenience of the witnesses. American Standard, Inc. v. Bendix  
19 Cup, supra, 487 F.Supp. at 262. For this factor, Texas is the  
20 most convenient forum.

21 Plaintiffs' attorneys have argued, without submitting any  
22 supporting declarations, that they will require the testimony of  
23 14 witnesses for whom Texas, plaintiffs' home, would allegedly be  
24 an inconvenient forum. Analysis of these "witnesses" reveals  
25 that:

26 - Only 4 of the 17 witnesses are asserted to be percipient  
27 witnesses to the claims alleged in plaintiffs' complaint  
28 (Rathbun, Mithoff, Bush and Prince). All four of these witnesses

1 are presently employees of one of the defendants, and pursuant to  
2 the offer made in defendants' moving papers, all would be  
3 provided to the Texas court as witnesses at defendants' expense;

4 - No location is listed at all for four of the witnesses,  
5 and one of the remaining witnesses (Armstrong) does not reside  
6 within the subpoena power of this Court at all; and

7 - The remaining witnesses would be offered by plaintiffs to  
8 testify to matters not placed at issue by the complaint, but  
9 amount to testimony by other anti-Church litigants of their own  
10 allegations and claims.

11 Plaintiffs, in addition, have not provided any documentation  
12 to support their naked assertion that any of these witnesses are  
13 necessary, or that they are unwilling or unable to travel to  
14 Texas for trial. They have done nothing to preserve the  
15 testimony of any of these supposed witnesses.

16 In sharp contrast, defendants have presented to this Court a  
17 well-supported description of the many witnesses who reside in  
18 Texas, and whom defendants will be unable to call to the stand  
19 should the trial occur in California. These witnesses are key to  
20 the basic allegations in plaintiffs' complaint which defendants  
21 must defend against: allegations of fraudulent representation,  
22 conspiracy and loss of consortium that allegedly occurred before  
23 defendants were ever incorporated. Dean Stokes, for example, was  
24 Vicki's second husband, and the head of the Dallas Church where  
25 Vicki and Rick worked. Mr. Stokes is alleged by the Aznarans to  
26 have defrauded them, and to have broken up their marriage in the  
27 1970s. He is not a witness who can be compelled to testify in  
28 California. Karen McRae, a hostile witness, will testify

1 concerning admissions made to her by Vicki and Rick when they  
2 returned to Texas in 1987. Tammy McLeroy is Richard's former  
3 wife and was also a member of the Dallas Church. She will  
4 provide eyewitness testimony disputing plaintiffs' loss of  
5 consortium, emotional distress and fraud claims, but cannot be  
6 compelled to come to California to do so. The list is  
7 substantial, and concerns matters directly relevant to  
8 plaintiffs' tort claims.<sup>2</sup>

9 VI.

10 THE INTERESTS OF JUSTICE FAVOR TRIAL IN DALLAS

11 As defendants noted in their moving papers, nine out of  
12 eleven causes of action, and the very beginning of contact  
13 between plaintiffs and the Scientology religion that they would  
14 put on trial, arose in Texas. Although two claims concern  
15 matters that occurred primarily in California, the majority of  
16 plaintiffs' claims have their factual and legal basis in Texas.  
17 Plaintiffs need not have traveled to Los Angeles to raise their  
18 action in an already over-congested court. Plaintiffs have  
19 offered no response to this obvious fact. Under these  
20 circumstances, the interests of justice are to try this case in  
21 the Northern District of Texas.

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23 \_\_\_\_\_  
24 <sup>2</sup> Plaintiffs' final argument, that a single location mentioned  
25 in their complaint can be viewed from Los Angeles warrants little  
26 response. "Happy Valley" is more than 80 miles from this  
27 courthouse and is currently the site of a private boarding  
28 school. It is unlikely that the jury would benefit from the long  
drive to this location, or that the Court would permit such an  
excursion. Moreover, the complaint lists virtually dozens of  
places where the acts alleged supposedly occurred, including many  
in Texas and Florida, making a trip to one site to the exclusion  
of others meaningless.



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CONCLUSION

Plaintiffs have raised a series of fruitless objections to defendants' motion, which only serve to underscore the obvious and compelling factor: defendants would be prevented from calling necessary witnesses were trial to go forward here, although they will be able to obtain service of process over those witnesses in the state of Texas, whereas plaintiffs will not be handicapped by returning to their home forum. Indeed, it will be more convenient for plaintiffs as well, particularly because defendants have stipulated to produce the witnesses. Defendants thus request that this Court transfer this case to the Northern District of Texas forthwith.

DATED: August 10, 1992

Respectfully submitted,

BOWLES & MOXON

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H:\AZNARAN\VENUE1.REP

PROOF OF SERVICE

STATE OF CALIFORNIA        )  
                                  )    ss.  
COUNTY OF LOS ANGELES    )

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Blvd., Suite 2000, Hollywood, California 90028.

On August 10, 1992 I caused to be served the foregoing document described as DEFENDANTS' REPLY IN SUPPORT OF MOTION TO TRANSFER THIS ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS on interested parties

- by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;
- by placing  the original  a true copy thereof in sealed envelopes addressed as follows:

Ford Greene  
711 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

Paul Morantz,  
Box 511, Pacific Palisades  
CA 90272

BY MAIL

- \*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.
- As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of

deposit for mailing in affidavit.

Executed on August 10, 1992, at Los Angeles,  
California.

- [ ] **\*\* (BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

Executed on \_\_\_\_\_, 1992, at Los Angeles, California.

- [ ] (State) I declare under penalty of the laws of the State of California that the above is true and correct.
- [X] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Type or Print Name

\_\_\_\_\_  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

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